

**In The United States Patent and Trademark Office
On Appeal From The Examiner To The Board
of Patent Appeals and Interferences**

In re Application of: I-Wen Winnie Tsou et al.
Serial No.: 09/870,342
Filing Date: May 29, 2001
Group Art No.: 3622
Confirmation No.: 7717
Examiner: Michael Bekerman
Title: *Methods, Devices And Systems For Real-Time Instant
Presence With Advertisement (RIPA)*

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Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Appeal Brief

Appellants have appealed to the Board of Patent Appeals and Interferences from the decision of the Examiner sent electronically January 8, 2009, finally rejecting Claims 1-2, 4-6, 8-18, 20-24, 26, 28, 30, and 32-36, all of which are pending in this case. An Advisory Action was electronically sent January 8, 2009, and Appellants filed a Notice of Appeal on January 14, 2009. Appellants respectfully submit this Appeal Brief with the statutory fee of \$540.00.

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Real Party In Interest

This application is currently owned by Fujitsu Limited as indicated by an assignment recorded on November 7, 2007, in the Assignment Records of the United States Patent and Trademark Office at Reel 020079, Frame 0571.

Related Appeals and Interferences

There are no known appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision regarding this appeal.

Status of Claims

Claims 1-2, 4-6, 8-18, 20-24, 26, 28, 30, and 32-36 are pending in this application and all stand rejected under a Final Office Action sent electronically November 17, 2008. Appellants present Claims 1-2, 4-6, 8-18, 20-24, 26, 28, 30, and 32-36 for appeal. Appendix A shows these claims involved in this appeal.

Status of Amendments

All amendments presented by the Appellants have been entered by the Examiner.

Summary of Claimed Subject Matter

For the convenience of the Board, Appellants provide the following mappings of the claims here on appeal. Appellants do not necessarily identify all portions of the specification and drawings relevant to the recited elements of the claims. Appellants provide the following mapping not to limit the scope of the claims, but to help the Board make a decision on this Appeal.

Claim 1 of the present invention recites a method of providing presence information, wherein a first instant messaging user possesses a wireless device while at a location of a business. The method includes storing business information identifying said business in a business client system device and retrieving said business information (see, e.g., paragraphs 31 and 37; Figures 2 and 3). The method further includes transmitting all or part of said business information as presence information, including physical location information of said business, to said wireless device of said first instant messaging user (see, e.g., paragraphs 32 and 39; Figures 2 and 3). The physical location information of said business that is transmitted to said wireless device includes one or more of the following: an address, phone number, directions to said location, email address information of said business, and one or more links to Internet websites (see, e.g., paragraph 37). The presence information is received by said wireless device of said first instant messaging user in response to a single action performed by said first instant messaging user (see, e.g., paragraph 38). The method further includes storing click statistics in a database, wherein said click statistics comprise statistics of viewing of said presence information by one or more second instant messaging users (see, e.g., paragraphs 48 and 49).

Claim 21 of the present invention recites a business client system for sending presence information with advertisement to a wireless instant messaging user. The system includes a storage component for storing business information of said business (see, e.g., paragraphs 31 and 37; Figures 2 and 3), and a statistics component to receive and store statistic reports on activity of said instant messaging user in selecting said business information of said business (see, e.g., paragraphs 48 and 49). The statistic reports are received from an instant messaging server of an instant messaging service and comprise information for business analysis and measurement of a marketing success of said

transmitted business information (see, e.g., paragraph 51). Furthermore, the system includes a business client device that further includes a wireless communication component for transmitting and receiving data using a wireless protocol, and a transmitting component to transmit said business information to said wireless instant messaging user such that presence information, including physical location information of said business, for said wireless instant messaging user is updated (see, e.g., paragraphs 32 and 39; Figures 2 and 3). The physical location information of said business includes one or more of the following: an address, phone number, directions to said location, email address information of said business, and one or more links to Internet websites (see, e.g., paragraph 37).

Claim 28 of the present invention recites a method of advertising that includes sending presence information, including physical location information of a business, to a visiting instant messaging user who visits said business and to one or more instant messaging users who list said visiting instant messaging user on an instant messaging address list (see, e.g., paragraphs 32 and 39; Figures 2 and 3). The physical location information of said business that is sent to said visiting instant messaging user includes one or more of the following: an address, phone number, directions to said location, email address information of said business, and one or more links to Internet websites (see, e.g., paragraph 37). The method also includes displaying part of said presence information to said visiting instant messaging user and to said one or more instant messenger users, wherein said part of said presence information includes a link to advertisements for said business (see, e.g., paragraphs 47, 50 and 51).

Claim 32 of the present invention recites a system for real time instant presence with advertising. The system includes a first instant messaging user wireless device belonging to a first instant messaging user, that includes an instant messaging client software component. The system also includes a device at a business location of a business for receiving real time presence information, including physical location information, from said one or more instant messaging user wireless devices and for sending business information to instant messaging users (see, e.g., paragraphs 32 and 39; Figures 2 and 3). The business information includes advertising and wherein said received physical location information comprises one or more of the following: an address of said business, a phone number of said business, directions to

said business location, email address information of said business, and one or more links to Internet websites (see, e.g., paragraph 37). Furthermore, the system includes one or more additional instant messaging user devices each including said instant messaging client software component, wherein each of said additional instant messaging user devices has an instant messaging address list containing the instant messaging identity of said first instant messaging user, said address list being controlled by said additional instant messaging users and the presence information displayed for said members of said address list is under control of said instant messaging client software (see, e.g., paragraphs 46 and 47). Moreover, the system includes an instant messaging server that communicates over the Internet with said business device, said first instant messaging user wireless device and said additional instant messaging user devices, and wherein said instant messaging server stores click statistics in a database, said click statistics comprising statistics of viewing of said presence information by said additional instant messaging user devices (see, e.g., paragraphs 48 and 49).

Ground of Rejection to be Reviewed on Appeal

Appellants request that the Board review the Examiner's rejection of Claims 1-2, 4-6, 8-18, 20-24, 26, 28, 30, and 32-36 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,968,179 issued to De Vries ("*De Vries*"). In addition, Appellants request that the Board review the Examiner's rejection of Claim 31 as being unpatentable under 35 U.S.C. § 103(a) over *De Vries* in view of U.S. Publication No. 2003/0004743 issued to Callegari ("*Callegari*").

Argument

I. The Examiner's Rejection of Claims 1-2, 4-6, 8-18, 20-24, 26, 28, 30, and 32-36 is Improper

Claims 1-2, 4-6, 8-18, 20-24, 26, 28, 30, and 32-36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *De Vries*.

Independent Claim 1 of the present application recites the following limitations:

A method of providing presence information, wherein a first instant messaging user possesses a wireless device while at a location of a business, comprising:

storing business information identifying said business in a business client system device and retrieving said business information;

transmitting all or part of said business information as presence information, including physical location information of said business, to said wireless device of said first instant messaging user, wherein said physical location information of said business that is transmitted to said wireless device comprises one or more of the following: an address, phone number, directions to said location, email address information of said business, and one or more links to Internet websites;

whereby said presence information is received by said wireless device of said first instant messaging user in response to a single action performed by said first instant messaging user; and

storing click statistics in a database, wherein said click statistics comprise statistics of viewing of said presence information by one or more second instant messaging users.

Appellants respectfully submit that *De Vries* does not disclose, teach or suggest each and every one of these limitations. For example, the Final Office Action notes that *De Vries* may not teach that “said physical location information of said business that is transmitted to said wireless device comprises one or more of the following: an address, phone number, directions to said location, email address information of said business, and one or more links to Internet websites.” However, the Office Action asserts that the particular type of information (i.e., physical location information) is irrelevant and that the disclosure of *any* type of information (i.e., an advertisement) is sufficient to meet this limitation. Appellants respectfully contend that the Examiner is ignoring the words “physical location” as a modifier of the term “information.” The claims specifically require this type of information

and, in fact, provide a *Markush* group reciting various examples of such information. The fact is that the reference does not disclose any of these examples of physical location information. Furthermore, the Office Action does not explain what it would be obvious to send physical location information in light of the teachings of *De Vries*. Instead, the Office Action disregards this claim language.

In the Advisory Action, the Examiner argues that there is “no physical location inherent in” some elements of the Markush group. However, all of the examples in the Markush group may be associated with a particular location. The Advisory Action also assert that the steps of the method are performed the same way regardless of the information that is received. However, the particular type of information recited in the claims is integral in all of the claim steps and thus they cannot be performed without that particular type of information.

Moreover, *De Vries* does not disclose, teach or suggest “storing click statistics in a database, wherein said click statistics comprise statistics of viewing of said presence information by one or more second instant messaging users.” For a teaching of this limitation, the Office Action cites to Column 7, line 55 – Column 8, line 5 of *De Vries*, which discloses that a user may subscribe to a service that provides the user updates of the location of the user’s “buddies.” Appellants respectfully submit that this is not a disclosure or suggestion of “storing click statistics in a database, wherein said click statistics comprise statistics of viewing of said presence information by one or more second instant messaging users.” First, the cited passage does not disclose “click statistics.” As with “physical location information,” the Office Action seeks to disregard the specific claim language and interpret “click statistics” to mean the information of *De Vries* that is pushed to the user based on an earlier subscription to a service. However, in this case, Appellants have chosen to “be their own lexicographer” and have used a term that is defined uniquely in the present application. Specifically, Paragraph 48 defines a click statistic as a statistic “associated with the selection of presence information by instant messaging users.” In *De Vries* there is no selection of presence information, instead information is passively pushed to a user. Second, even assuming for the sake of argument that the receipt of a user’s location information based on a previous subscription is a “click,” there is no disclosure of a database that stores

statistics of the users who actually view the location information of another user/buddy (since the information is passively sent and not due to a request for that particular information by a user).

Furthermore, the Advisory Action indicates that *De Vries* teaching of “the storing of selections, by buddies, of presence information requested to be viewed” is a disclosure of the limitation at issue. However, this is not a disclosure of “statistics of viewing of said presence information by one or more second instant messaging users.”

For at least these reasons, Appellants respectfully submit that Claim 1 is in condition for allowance. Therefore, Appellants respectfully request allowance of Claim 1, as well as the claims that depend from Claim 1. Furthermore, independent Claim 32 includes limitations that are similar to those limitations of Claim 1 discussed above, and thus is allowable for similar reasons. Therefore, Appellants also respectfully request allowance of Claim 32, as well as the claims that depend from Claim 32.

Independent Claim 21 of the present application recites the following limitations:

- A business client system for sending presence information with advertisement to a wireless instant messaging user, comprising:
 - a storage component for storing business information of said business,
 - a statistics component to receive and store statistic reports on activity of said instant messaging user in selecting said business information of said business, wherein said statistic reports are received from an instant messaging server of an instant messaging service; and wherein said statistic reports comprise information for business analysis and measurement of a marketing success of said transmitted business information, and
 - a business client device further comprising:
 - a wireless communication component for transmitting and receiving data using a wireless protocol; and
 - a transmitting component to transmit said business information to said wireless instant messaging user,
 - whereby presence information, including physical location information of said business, for said wireless instant messaging user is updated, wherein said physical location information of said business comprises one or more of the following: an address, phone number, directions to said location, email address information of said business, and one or more links to Internet websites.

Appellants respectfully submit that *De Vries* does not disclose, teach or suggest each and every one of these limitations. For example, there is no disclosure of “a statistics component to receive and store statistic reports on activity of said instant messaging user in selecting said business information of said business, wherein said statistic reports are received from an instant messaging server of an instant messaging service; and wherein said statistic reports comprise information for business analysis and measurement of a marketing success of said transmitted business information.” For a teaching of this limitation, the Office Action cites to Column 11, lines 53-54 of *De Vries*. However, whether a user is a “coffee drinker or a vegetarian” is determined in *De Vries* by the profile or preferences that are specified by the user, it is not disclosed as being based on “statistic reports on activity of said instant messaging user in selecting said business information of said business.” The Response to Arguments section of the Final Office Action first argues that this entry of user profile information is a disclosure of a statistic report sent by the user, but this is clearly not a “statistic report” given the broadest reasonable meaning of that term in light of the present specification. Furthermore, it is not a statistic report of the user’s activity “in selecting said business information of said business.” A user providing profile information that the user is coffee drinker or a vegetarian is clearly not related to a user’s selection of the previously-recited information of a business. The Advisory Action attempts to convolute the meaning of this limitation, but the construction proposed by the Examiner is clearly not consistent with the plain meaning of the words of the claim.

Furthermore, there is no disclosure that statistic reports are received from an instant messaging server. As noted above, the Office Action argues that the statistic reports are received from the user. Now, in this context, the Office Action asserts that they are received from an instant messaging server. There is no disclosure that updates to a user’s profile are received from a server (they would be sent to the server). In addition, as asserted above, the user profile information is not a statistic report on activity of an instant messaging user in selecting business information of a business.

Moreover, there is no disclosure that statistic reports comprise information for business analysis and measurement of a marketing success of said transmitted business information. Again, the Office Action chooses to ignore this limitation by asserting that it

does not limit the claim. However, this limitation clearly identifies a type of information (“information for business analysis and measurement of a marketing success of said transmitted business information”) that must be included in the reports that are required by the claim. This is not an intended use. It is a recitation of the communication of a certain type of information. Such information for business analysis and measurement of a marketing success is not disclosed by a user’s profile information. The Advisory Action asserts that because this limitation is preceded by the word “wherein” it should be given no meaning. This M.P.E.P. sections cited by the Examiner do not lead to this result. While some uses of this term might be suspect and should be subjected to a close review, this limitation clearly limits the claim, is not an intended use, and could have easily been recited without including the term “wherein.” Again, the Examiner is attempting to disregard particular limitations of the claim instead of examining such limitations on their merit.

Finally, for the same reasons as discussed above in conjunction with Claim 1, *De Vries* does not disclose, teach or suggest that “physical location information of said business comprises one or more of the following: an address, phone number, directions to said location, email address information of said business, and one or more links to Internet websites.”

For at least these reasons, Appellants respectfully submit that Claim 21 is in condition for allowance. Therefore, Appellants respectfully request allowance of Claim 21, as well as the claims that depend from Claim 21.

Independent Claim 28 of the present application, as amended, recites the following limitations:

A method of advertising comprising:
sending presence information, including physical location information of a business, to a visiting instant messaging user who visits said business and to one or more instant messaging users who list said visiting instant messaging user on an instant messaging address list, wherein said physical location information of said business that is sent to said visiting instant messaging user comprises one or more of the following: an address, phone number, directions to said location, email address information of said business, and one or more links to Internet websites; and
displaying part of said presence information to said visiting instant

messaging user and to said one or more instant messenger users;
wherein said part of said presence information includes a link to advertisements for said business.

Appellants respectfully submit that *De Vries* does not disclose, teach or suggest each and every one of these limitations. For example, for the same reasons as discussed above in conjunction with Claim 1, *De Vries* does not disclose, teach or suggest that “physical location information of said business that is sent to said visiting instant messaging user comprises one or more of the following: an address, phone number, directions to said location, email address information of said business, and one or more links to Internet websites.”

Furthermore, *De Vries* does not disclose, teach or suggest presence information that includes a link to advertisements for a business.

For at least these reasons, Appellants respectfully submit that Claim 28 is in condition for allowance. Therefore, Appellants respectfully request reconsideration and allowance of Claim 28, as well as the claims that depend from Claim 28.

II. The Examiner’s Rejection of Claim 31 is Improper

Claim 31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *De Vries* in view of *Callegari*. Claim 31 depends from independent Claim 28 and is at least allowable due to the reasons presented above in conjunction with Claim 28.

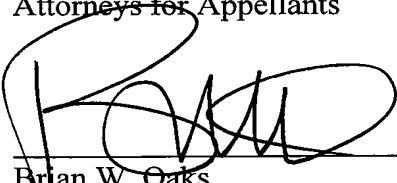
Conclusion

Appellants have demonstrated that the present invention, as claimed, is clearly distinguishable over the prior art cited by the Examiner. Therefore, Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the final rejection of the Examiner and instruct the Examiner to issue a notice of allowance of all claims.

Please charge a fee in amount of \$540.00 to cover the filing fee for this Appeal Brief to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P. The Commissioner is also authorized to charge any other fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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Appendix A: Claims on Appeal

1. (Previously Presented) A method of providing presence information, wherein a first instant messaging user possesses a wireless device while at a location of a business, comprising:

storing business information identifying said business in a business client system device and retrieving said business information;

transmitting all or part of said business information as presence information, including physical location information of said business, to said wireless device of said first instant messaging user, wherein said physical location information of said business that is transmitted to said wireless device comprises one or more of the following: an address, phone number, directions to said location, email address information of said business, and one or more links to Internet websites;

whereby said presence information is received by said wireless device of said first instant messaging user in response to a single action performed by said first instant messaging user; and

storing click statistics in a database, wherein said click statistics comprise statistics of viewing of said presence information by one or more second instant messaging users.

2. (Original) The method of claim 1 comprising:

receiving said presence information of said business in said instant messaging user wireless device from said business client system, and

storing said presence information in said wireless device without requiring manual entry actions on said wireless device by said first instant messaging user,

wherein an instant messaging client component is installed in said wireless device of said first instant messaging user, and

said component controls said receiving and storing of said presence information in said wireless device.

3. (Canceled)

4. (Previously Presented) The method of claim 1 wherein the single action is clicking a button.

5. (Original) The method of claim 1 comprising the additional step of moving said wireless device of said first instant messaging user within range to permit communication with said business client system if said wireless device is out of range from said business client system.

6. (Previously Presented) The method of claim 1 wherein said business information comprises one or more of the following information items: the name of said business, a description of said business, promotional information for said business, and an advertisement for said business.

7. (Canceled)

8. (Previously Presented) The method of claim 2 wherein the one or more second instant messaging users have created an instant messaging address list, wherein said address list contains the instant messaging identity of said first instant messaging user, whereby said one or more second instant messaging users may view the presence information for said first instant messaging user; and wherein each of said one or more second instant messaging users have a device wherein said instant messaging client component is installed.

9. (Previously Presented) The method of claim 8, wherein said first instant messaging user and said one or more second instant messaging users subscribe to an instant messaging service; wherein said instant messaging service comprises an instant messaging server.

10. (Previously Presented) The method of claim 9 comprising the additional step of: transmitting said presence information of said first instant messaging user from said instant messaging server to said devices of said one or more second instant messaging users.

11. (Previously Presented) The method of claim 10 comprising the additional step of displaying said presence information of said first instant messaging user on said one or more second instant messaging user devices.

12. (Original) The method of claim 11 wherein said displaying includes displaying a selectable icon representing the presence information for said first instant messaging user.

13. (Previously Presented) The method of claim 12 wherein said one or more second instant messaging users can select said selectable icon and display all or part of said received business information.

14. (Original) The method of claim 11 wherein said displaying of said business information includes displaying one or more of the following: text; a ticker-type display, wherein said display scrolls; an animation; images; and links to web sites on the Internet.

15. (Original) The method of claim 2 comprising the additional step of: transmitting a user profile of said instant messaging user from said wireless device of said first instant messaging user to said business client system.

16. (Original) The method of claim 15 wherein said user profile of said first instant messaging user comprises contact information of said instant messaging user.

17. (Original) The method of claim 15 wherein said first instant messaging user needs to explicitly enable said wireless device prior to transmitting said user profile.

18. (Previously Presented) The method of claim 2 comprising the step of: transmitting said presence information of said first instant messaging user, under control of said instant messaging client component, to an instant messaging server of an instant messaging service.

19. (Canceled)

20. (Original) The method of claim 2 comprising the additional step of displaying said presence information on said wireless device of said first instant messaging user.

21. (Previously Presented) A business client system for sending presence information with advertisement to a wireless instant messaging user, comprising:

a storage component for storing business information of said business,

a statistics component to receive and store statistic reports on activity of said instant messaging user in selecting said business information of said business, wherein said statistic reports are received from an instant messaging server of an instant messaging service; and wherein said statistic reports comprise information for business analysis and measurement of a marketing success of said transmitted business information, and

a business client device further comprising:

a wireless communication component for transmitting and receiving data using a wireless protocol; and

a transmitting component to transmit said business information to said wireless instant messaging user,

whereby presence information, including physical location information of said business, for said wireless instant messaging user is updated, wherein said physical location information of said business comprises one or more of the following: an address, phone number, directions to said location, email address information of said business, and one or more links to Internet websites.

22. (Original) The business client system of claim 21 wherein said business client device further comprises:

a receiving component for receiving a user profile from said wireless device of said instant messaging user; and

a user database component for storing said user profile of said instant messaging user.

23. (Original) The business client system of claim 22 wherein said user profile is sent by said instant messaging user under control of an instant messaging client component of said wireless device, after said instant messaging user agrees to furnish said user profile.

24. (Previously Presented) The business client system of claim 21 wherein said business information comprises one or more of the following information items:

a introduction to said business, a description of said business, and
an advertisement for said business.

25. (Canceled)

26. (Previously Presented) The business client system of claim 21 wherein said statistic reports are delivered by email or in printed form to said business.

27. (Canceled)

28. (Previously Presented) A method of advertising comprising:
sending presence information, including physical location information of a business, to a visiting instant messaging user who visits said business and to one or more instant messaging users who list said visiting instant messaging user on an instant messaging address list, wherein said physical location information of said business that is sent to said visiting instant messaging user comprises one or more of the following: an address, phone number, directions to said location, email address information of said business, and one or more links to Internet websites; and

displaying part of said presence information to said visiting instant messaging user and to said one or more instant messenger users;

wherein said part of said presence information includes a link to advertisements for said business.

29. (Canceled)

30. (Previously Presented) The method of claim 28 wherein said business sends dynamic updates with additional promotions to said visiting instant messaging user and said one or more instant messaging users.

31. (Previously Presented) The method of claim 28 comprising the further step of linking said one or more instant messaging users to a website, wherein said users can subscribe to additional information about said business; wherein said subscribing user receives said additional information regardless of whether said presence information of said visiting instant messaging user has been updated.

32. (Previously Presented) A system for real time instant presence with advertising comprising:

- a first instant messaging user wireless device belonging to a first instant messaging user, that includes an instant messaging client software component;

- a device at a business location of a business for receiving real time presence information, including physical location information, from said one or more instant messaging user wireless devices and for sending business information to instant messaging users; wherein said business information includes advertising and wherein said received physical location information comprises one or more of the following: an address of said business, a phone number of said business, directions to said business location, email address information of said business, and one or more links to Internet websites;

- one or more additional instant messaging user devices; each including said instant messaging client software component; wherein each of said additional instant messaging user devices has an instant messaging address list containing the instant messaging identity of said first instant messaging user, wherein said address list is controlled by said additional instant messaging users and the presence information displayed for said members of said address list is under control of said instant messaging client software; and

- an instant messaging server;

- wherein said instant messaging server communicates over the Internet with said business device, said first instant messaging user wireless device and said additional instant messaging user devices, and wherein said instant messaging server stores click statistics in a

database, said click statistics comprising statistics of viewing of said presence information by said additional instant messaging user devices.

33. (Previously Presented) The system of claim 32 wherein said presence information of said first instant messaging user is sent from an instant messaging server to said additional instant messaging user devices via the Internet.

34. (Previously Presented) The system of claim 32 wherein said first instant messaging user wireless device transmits said presence information of said first instant messaging user, under control of said instant messaging client component, to said instant messaging server via the Internet.

35. (Previously Presented) The system of claim 32 wherein said instant messaging server stores one or more of the following: a business database, a user database; and a database of click statistics, wherein statistic reports are generated.

36. (Previously Presented) The system of claim 32 wherein said business device includes a statistics component, whereby statistics are sent from said instant messaging server database to said business device and stored for display and analysis of the effectiveness of said advertising of said business.

37. (Canceled)

Appendix B: Evidence

NONE

Appendix C: Related Proceedings

NONE